FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

No. 192

HERBERT LESTER TYSON
Petitioner
vs.
THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF AMICUS CURIAE

WARREN E. MILLER,
SOUTHERN BUILDING,
WASHINGTON, D. C.,
Amicus Curiae.

Washington Daily Record, Printcraft Building

INDEX

	Page
MOTION TO FILE AMICUS CURIAE BRIEF	1
STATEMENT	2
PERTINENT STATUTES AND REGULATIONS	3
QUESTIONS PRESENTED	6
ARGUMENT	6
(a) When does the jurisdictional "disagreement authorizing suit as contemplated by Section 19 arise?	6-19
(b) When was this suit instituted?	19
(c) When does the Statute of Limitations begin?	20-22
CONCLUSION	22

APPENDIX

Letter from Honorable Frank T. Hines, Administrator of Veterans' Affairs, re: Procedure and Practice of the United States Veterans' Administration	24-35
Report of Honorable William R. Harr, Commissioner, Supreme Court of the District of Columbia	36-63
Supplemental Report of Honorable William R. Harr, Commissioner, Supreme Court, District of Columbia, distinguishing U. S. vs. Michel, 282 U. S. 656	64-68

CITATIONS

CASES

Albek vs. U. S., 4 Fed. Supp. 1020	17, 57, 58
Atkinson vs. Greene, 197 N. C. 118-120, 147 S. E. 811	20
Baraby vs. U. S., 1 Fed. Supp. 443	11
Boan vs. U. S., (D. C.) 3 Fed. Supp. 219	12, 15, 53
Bowers vs. U. S., Law No. 82 384, Supreme Court of the District of Columbia (Commissioner's report)	19, 36,64
Burnet, Commissioner vs. Willingham L & T Co., 282 U. S. 437, 51 S. Ct. 185, 75 L. Ed. 448	21
Corn vs. U. S., (C. C. A. 10th) 74 Fed. (2d) 438	59, 61
Creasy vs. U. S., (D. C.) 4 Fed. Supp. 175	15, 16, 17, 18, 53, 55, 56, 57, 60
Ex parte Connaway, Receiver of Moscow National Bank, 178 U. S. 421, 20 S. Ct. 951, 44 L. Ed. 1134	20
Fearing vs. Glenn (C. C. A.) 73 F. 116	20
Glazow vs. U. S. (C. C. A. 2) 50 Fed. (2d) 178	22
Hipkins vs. U. S., 1 Fed. Supp. 505	59, 61
Hunnewell vs. U. S., 2 Fed. Supp. 389	59, 61
International Bank & Trust Co. vs. Scott, (C. C. A.) 159 F. 58	20
Lynch vs. U. S., 292 U. S. 571 (78 L. Ed. 1434)	9
McNally, et al vs. U. S., (C. C. A. 8) 52 Fed. (2d) 440	22
Morrison vs. Lewis, 197 N. C. 79, 147 S. E. 729	20
Ozawa vs. U. S., 260 U. S. 178, 67 L. Ed. 100-36 Cyc 1108C	12

Roberts vs. U. S., (C. C. A. 10th) 66 Fed. (2d) 273 ..... 59, 61
Snow, Administrator vs. U. S., (D. C. N. C.) 57
Stallman vs. U. S., (C. C. A.) 67 Fed. (2d) 675 ..... 16, 59, 61
Tyson vs. U. S., 76 Fed. (2d) 533 ..... 18, 55, 59, 60, 65
U. S. vs. Arzner, 287 U. S. 470 22
U. S. vs. Cox, (C. C. A. 5) 24 Fed. (2d) 944 22
U. S. vs. Gower, (C. C. A. 10th) 71 Fed. (2d) 366 ..... 59, 60
U. S. vs. Hardy, et al, 74 Fed. (2d) 841 21
U. S. vs. Jackson, 280 U. S. 183, 74 L. Ed. 361 13
U. S. vs. LePage, (C. C. A. 1) 59 Fed. (2d) 165 22
U. S. vs. Michel, 284 U. S. 656 ..... 19, 64, 65, 66, 67, 68
U. S. vs. Phillips, (C. C. A. 8) 44 Fed. (2d) 689 22
U. S. vs. Tarrer, 77 Fed. (2d) 423 ..... 15, 18
U. S. vs. Thomson, (C. C. A. 10) 71 Fed. (2d) 860 ..... 59, 61
U. S. vs. Walker, 77 Fed. (2d) 415 ..... 14, 16, 18, 51
Walton vs. U. S., 73 Fed. (2d) 15 20
Weaver vs. U. S., (C. C. A. 4th) 72 Fed. (2d) 20 ..... 13, 15, 18, 53, 55, 59, 60
Westling vs. U. S., (C. C. A. 9) 64 Fed. (2d) 464 21
White vs. U. S., 270 U. S. 175, 70 L. Ed. 530 ..... 9, 22
Wilbur National Bank vs. U. S., 79 L. Ed. 402 9
Wozniak, Administratrix vs. U. S., No. 705, U. S. D. C. Western District, decided August 27, 1935 17

STATUTES AND REGULATIONS

Act of May 29, 1928, Chapter 875, Par. 1, 45 Stat. 964 21
Section 2, Consolidation Act, approved July 3, 1930, 38 U. S. C., Supp. 11a 40, 45, 48
Section 5, Public 522, 71st Congress, 46 Stat. 99 ..... 1 4, 7, 39, 48
Section 19, World War Veterans' Act, 1924, as amended, 38 U. S. C. 445 ..... 3, 8, 20, 38, 53
Section 28 U. S. C. A. Par. 724, 725 20
Section 475, Consolidated Statutes of North Carolina 20
Section 500, World War Veterans' Act, as amended, March 4, 1925 10
Section 3226, Revised statutes 65
U. S. Veterans' Administration Regulation 3106 ..... 42, 49, 50, 62
Joint Resolution of Congress, Approved January 28, 1935 ..... 39, 45, 48
U. S. Veterans' Administration Regulation 31073 ..... 5, 7, 9, 13, 43, 44, 49
U. S. Veterans' Administration Regulation 3200 ..... 41, 44
U. S. Veterans' Administration Regulation 3201 ..... 41, 49
U. S. Veterans' Administration Regulation 3204 ..... 42, 44, 49, 50
22 Corpus Juris 98, Evidence, Section 38 51

MISCELLANEOUS

Sen Rep. 885, 71st. Cong., 2nd Sess., 1930 21

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

No. 192

HERBERT LESTER TYSON
Petitioner
vs.
THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF AMICUS CURIAE

MAY IT PLEASE THE COURT:

Permission is respectfully requested of this Court to file a brief herein as *amicus curiae* presenting for

the consideration of the Court certain phases of the question here involved which is of great importance to many disabled World War veterans and their beneficiaries.

J. Melville Broughton, Attorney for Petitioner and Honorable Stanley Reed, Solicitor General of the United States, on behalf of respondent, have kindly consented to the filing of this *amicus curiae* brief.

Wherefore, leave of Court is respectfully requested to file as *amicus curiae* the brief hereto annexed.

(signed) WARREN E. MILLER.

DISTRICT OF COLUMBIA:

Warren E. Miller being duly sworn deposes and says that the facts and matters stated in the foregoing motion are true and correct:

(signed) WARREN E. MILLER.

Subscribed and sworn to before me this 19th day of December, 1935.

RANDOLPH C. RICHARDSON, *Notary Public D. C.*

BRIEF AMICUS CURIAE

STATEMENT

On July 2, 1931 petitioner signed and executed U. S. Veterans' Administration Form 579, a claim for (R.6) total permanent disability benefits under his insurance contract. This was received by said Administration at Washington, D. C. on July 3, 1931.

The claim was acted upon by the Insurance Claims Council and a letter bearing date of November 12, 1932 (R. 15-16), and mailed from Washington (R. 7) November 14, 1932 was received by petitioner at his R. F.

D. address in Bladen County, North Carolina on November 16, 1932. This letter (R. 15) advised petitioner that the evidence was not sufficient to establish total permanent disability and that petitioner could consider such denial final for the purposes of instituting suit under Section 19 of the World War Veterans' Act, 1924, as amended, and further stated:

> "If you accept the denial of the claim by the Council as final the suspension of the Statute of Limitations provided by Section 19 shall cease from and after the date of this letter plus the number of days usually required by the Post Office Department for the transmission of regular mail from Washington, D. C. to your last address of record."

Petition was filed and summons issued on November 17, 1932 (R7).

PERTINENT STATUTE AND REGULATIONS

Section 19, World War Veterans' Act, 1924, as amended July 3, 1930 (38 U. S. C. 445), which is the only law under which the United States has consented to be sued in contracts of this nature, provides in part:

> "*In the event of a disagreement as to a claim,* including claim for refund of premiums, *under a contract of insurance between the Bureau and any person or persons claiming thereunder* and action on the claim may be brought against the United States. . . ." (Italics supplied.)
>
> • • • •
>
> "No suit on yearly renewable term insurance shall be allowed under this section unless the same

shall have been brought within six years after the right accrued for which the claim is made or within one year after July 3, 1930, whichever is the later date, and no suit on United States Government life (converted) insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made: Provided, That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded; Provided further, *That this limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director. . . . .*" (Italics Supplied.)

Section 5, World War Veterans' Act, 1924 as amended July 3, 1930 provides:

"*The director,* subject to the general direction of the President, shall administer, execute and enforce the provisions of this act, and for that purpose *shall have full power and authority to make rules and regulations, not inconsistent* with the provisions of this Act, which are *necessary or appropriate to carry out its purposes, and shall decide all questions arising under this Act; and all decisions of questions of fact and law affecting any claimant to the benefits of Titles II, III, or IV of this Act shall be conclusive except as otherwise provided herein.* All officers and employees of the bureau shall perform such duties as may be assigned them by the director. All official acts performed by such officers or employees specially designated therefor by the director shall have the same force and effect as though performed by the director in person. Wherever under any provision or provisions of the Act regulations are directed or authorized to be made, such regulations,

unless the context otherwise requires, shall or may be made by the director. The director shall adopt reasonable and proper rules to govern the proceedure of the divisions and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits of compensation, insurance, vocational training, or maintenance and support allowance provided for in this Act, the forms of application of those claiming to be entitled to such benefits, the methods of making investigations and medical examinations, and the manner and form of adjudications and awards:" (Italics supplied.)

Section 3107 of the United States Veterans' Administration regulations in force when action was taken upon this claim, provides:

"If a decision is rendered by the insurance claims council adverse to the allegation made by the claimant, a letter so advising the claimant will be concurrently prepared and sent to the claimant at his last address of record. Said letter will advise the claimant the date on which the council denied the claim, and that the claimant may consider such denial final for purposes of instituting suit under section 19 of the World War Veterans' Act, 1924, as amended. *Said letter should further advise the claimant that if he accepts the denial of the claim by the council as final, the suspension of the statute of limitations provided by section 19 shall cease from and after the date of this letter plus the number of days usually required by the post office department for the transmission of regular mail from Washington, D. C., to the claimant's last address of record;* and that his case folder has been forwarded to the appropriate office or station (giving name and address of office

or station) and that any future inquiries should be directed to that office or station. If an appeal is filed the case file together with the appeal will be forwarded by the regional office or combined facility to the administrator, through the director of insurance, who shall at the time of forwarding the same indicate his approval or disapproval of the decision of the insurance claims council, from which appeal is taken. (November 1, 1931) (Italics supplied.)

QUESTIONS PRESENTED

The question presented is whether the instant suit was begun within the time prescribed by Section 19 of the World War Veterans' Act, 1924, as amended, which in turn presents the following questions—

(a) When does the jurisdictional "disagreement" authorizing suit as contemplated by said Section 19 arise?

(b) When was this suit instituted?

(c) When does the Statute of Limitations begin?

ARGUMENT

(a) WHEN DOES THE JURISDICTIONAL "DISAGREEMENT" AUTHORIZING SUIT AS CONTEMPLATED BY SAID SECTION 19 ARISE?

The position taken by the United States in the instant case is a direct attack upon the authority of the Administrator of Veterans' Affairs to establish by regulation the effective date of his denial of a claim for insurance benefits and the ending date of the suspension of the statute of limitations, which regulation has been acted upon by many thousands of disabled World War veterans and their beneficiaries who be-

lieved that they were justified in relying upon the information given them by the Administrator of Veterans' Affairs pursuant to the provisions of Section 3107, United States Veterans' Administration regulations promulgated by him.

The authority of the Administrator of Veterans' Affairs to promulgate this regulation is found in the first section of Public 522, 71st Congress, approved July 3, 1930 (46 Stat. 991) which provides:

> "Sec. 5 The director, subject to the general direction of the President, shall administer, execute, and enforce the proivsions of this Act, *and for that purpose shall have full power and authority to make rules and regulations,* not inconsistent with the provisions of this Act, *which are necessary or appropriate to carry out its purposes, and shall decide all questions* arising under this Act; and all *decisions of questions of fact and law* affecting any claimant to the benefits of Titles II, III, or IV *shall be conclusive* except as otherwise provided herein. . . ." (Italics supplied.)

In order that this court might be apprised of certain facts with respect to the procedure and practise of the United States Veterans' Administration relative to denial of claims for total and permanent disability and the issuance of the letter indicating disagreement as contemplated in Section 19, World War Veterans' Act, 1924, as amended, there is set forth in the appendix, pages 24 to 34, a letter signed by Frank T. Hines, Administrator of Veterans' Affairs, addressed to Watson B. Miller, Chairman, National Rehabilitation Committee, The American Legion, which is self-explanatory.

While the procedure of the Veterans' Administration relative to the issuance of the letters of disagree-

ment originally contemplated that such letters would be simultaneously issued at the time the decision was rendered, yet from an administrative standpoint it was not possible to do this and hence such letters were not issued until some days (an average of five) subsequent to the rendition of the decisions.* It was in part in recognition of the delay which might ensue between the time a decision denying a claim for insurance was rendered and the mailing of the notice of disagreement which induced the promulgation of the procedure set forth in the above quoted regulation with reference to the ceasing of the suspension of the statute of limitations.* This procedure was followed until August 23, 1935.**

The purpose of the denial is to create a "*disagreement*," as contemplated by Section 19, World War Veterans' Act, 1924, as amended, in order for suit to be instituted. It appears obvious that for such a disagreement to be accepted and the letter advising of the final denial to serve its purpose, viz., confer authority to institute suit, one must have knowledge of the action taken. It is fundamental that one cannot be deprived of their rights without notice.

The regulations provided for notice of denial. The veteran was informed of the fact that the statute of limitations began to run when he received the letter, and he had a right to rely upon the valid regulation which has the force and effect of law, as well as the letter which he received informing him of his rights.

---

*See paragraph 4, letter of December 5, 1935 from Frank T. Hines, Administrator of Veterans' Affairs set forth in Appendix, page 26.

**See paragraph 5 of the above letter in Appendix, page 26.

To hold otherwise would mean that the veteran was deceived and misled to his detriment. As was said by this court in the case of *Wilbur National Bank vs. United States* in decision rendered February 4, 1935, 79 L. Ed. 402 at page 405:

> "The statutes and regulations which govern the War Risk Insurance Bureau we must assume are known to those who deal with it."

As was said by this Court in the case of *Lynch vs. United States*, 292 U. S. 571, (78 L. Ed. 1434 at page 1439)—

> "In order to promote efficiency in administration and justice in the distribution of War Risk Insurance benefits, the Administration was given power to prescribe the form of policies and to make regulations. The form prescribed provided that the policy should be subject to all amendments to the original Act, to all regulations then in force or thereafter adopted."

The regulations issued by the Director are a part of the contract of insurance under the expressed terms thereof (*White vs. U. S.*, 270 U. S. 175, 70 L. Ed. 530) and these regulations which are a part of the contract, are as binding on the government as they are upon the veteran. *Lynch vs. U. S.*, 292 U. S. 571 (78 L. Ed. 1434).

Applying this rule of law to the instant case, it follows that this veteran had a right to rely, as he did rely, upon the regulation in force when he received this disagreement to wit, Section 3107.

The statutes and regulations gave this veteran the right to file suit within the time allowed by the regula-

tions. The decision of the Insurance Claims Council is conclusive upon the question of total and permanent disability but is not of itself a denial of the claim. It is not "self-executing." By its provisions it requires a letter, based upon this decision, written under the authority of the director, to be effective. Under the law, the denial is by the director. The decision of the Insurance Claims Council is effective only when the director promulgates it. Under the regulations, the Council's decision is conclusive only upon the question of total and permanent disability. It is conclusive until it is set aside. The Administrator might hold up a decision for further investigation or for some other reason and the denial is not effective until a letter is written in accordance with the regulations giving notice thereof, and received by the veteran.

Section 500, World War Veterans' Act, as amended, March 4, 1925 provides:

> "Sec. 500. Except in the event of legal proceedings under Section 19, of Title 1 of this act no claim agent or attorney . . . shall be recognized in the presentation or adjudication of claims. . . ."

It will thus be seen that an attorney had no standing before the Veterans' Administration in presenting a claim. Suit could only be instituted "in the event of a disagreement as to claim . . . *between* the Bureau and any person or persons claiming thereunder an action on the claim may be brought. . . ." Before the government can be sued there must be a dis agreement *between* the veteran and the Bureau. How could this "disagreement" be *between* the Bureau and the veteran when only one of these two par-

ties know about it? The claim of the veteran on one hand must be made to the Bureau and the denial or refusal of the Bureau to grant said claim must be made to the veteran before the transaction is completed *between* the two of them. Between two persons as between two points means "from one to the other."

The government could in effect, by failing to notify the veteran of the denial destroy his right to sue if it did not communicate its denial to the veteran. Like wise by withholding notice of decision the Veterans' Administration can defeat all claims, if respondant's contention be upheld.

It is respectfully submitted that the power to *make* a decision as granted by law to the director carries with it the power to say the time when the decision is effective.

In the case of *Baraby vs. United States,* 1 Fed. Supp. 443 at page 444 the court stated:

> "It seems quite clear that claimant could have commenced his action within a reasonable time after notice of the rejection of his claim by the director. In other words there should be read into the statute a requirement for service of notice upon claimant of final action on his claim and a reasonable time after receipt of notice, within which to file his complaint in event of a disagreement. . . The spirit and reason of the law should prevail over its letter; words may accordingly be rejected and others substituted. The Court should give effect to the intent of Congress. The policy of the legislation as a whole should be considered, the reason of its enactment, its antecedent history; this should be given effect according to 'its design and purpose sacrificing if necessary, literal meaning in order that the purpose may not fail'."

Ozawa vs. U. S., 260 U. S. 178,—67 L. Ed. 100-36 Cyc 1108C."

In the case of Boan vs. United States, 3 Fed. Supp. 219 at page 221, the court stated:

> "If a decision is rendered by the insurance claims council adverse to the allegations made by the claimant, a letter so advising the claimant will be concurrently prepared and sent to the claimant at his last address of record. Said letter will advise the claimant the date on which the council denied the claim, and that the claimant may consider such denial final for purposes of instituting suit under Section 19 of the World War Veterans' Act, 1924, as amended. Said letter should further advise the claimant that if he accepts the denial of the claim by the council as final, the suspension of the statute of limitations provided by section 19 shall cease from and after the date of this letter plus the number of days usually required by the post office department for the transmission of regular mail from Washington, D. C., to the claimant's last address of record, and that his case folder has been forwarded to the appropriate office or station (giving name and address of office or station) and that any future inquiries should be directed to that office or station. If an appeal is filed the case file, together with the appeal, will be forwarded by the regional office to the Administrator, through the director of insurance, who shall at the time of forwarding the same indicate his approval or disapproval of the decision of the insurance claims council from which appeal is taken."

It is fundamental that great weight is to be given to the construction given to a statute by the department charged with its administration unless the construc-

tion is clearly wrong or unless a different construction is plainly required.

U. S. vs. Jackson, 280 U. S. 183; 74 L. Ed. 361, and cases cited therein.

Pursuant to authority granted in Section 5 of the World War Veterans' Act, 1924, as amended, *supra,* Section 3107 of the Veterans' Administration regulations was promulgated, authorizing the veteran to be advised that if he considered such letter a final denial for the purpose of instituting suit, *the suspension of the statute of limitations as provided by section* 19, *World War Veterans' Act,* 1924, *as amended would cease from and after the date of the letter, plus the number of days usually required by the Post Office Department for the transmission of regular mail from Washington, D. C., to the claimant's last address of record.* (Section 3107 United States Veterans' Administration regulations effective November 1, 1931).

The authorities appear to hold that a claim is not filed when it is deposited in the mail, but only when *received* in the Bureau. Under these circumstances, why should the denial of the Bureau be held to be effective before it is *received* by the claimant? Not only do the Bureau's regulations require the notice ot be sent to the claimant (Section 3107, supra) but common fairness demands it. To hold a disabled World War veteran living in North Carolina to knowledge of the exact date when the Veterans' Administration in Washington acts upon his claim is a situation which was certainly not contemplated by Congress.

The decision of the Fourth Circuit Court of Appeals in the instant case is contrary to its own decision in the case of *Weaver vs. United States* (C. C. A. 4th) 72

Fed. (2d) 20, where at page 22 that court, contrary to its holding in the instant case stated:

> "Even if it could fairly be found from the facts stated that the plaintiff's claim was received by the Bureau on July 3, 1931, it could not be said that the statute was suspended for more than one day; and therefore after the denial of liability by the Bureau and receipt of notice thereof by the plaintiff he had only one day thereafter at the most to institute suit."

The decision of the lower court in the instant case is directly in conflict with the decision of the United States Circuit Court of Appeals for the Fifth Circuit in the case of *United States vs. Walker*, 77 Fed. (2d) 415, where the court held at page 416—

> "It s to be noted that under the statute the period of extension begins with 'the filing in the bureau of the claim sued upon,' and ends, not with the filing of the order denying the claim, but with 'the denial of said claim by the director.' It well may be supposed that in enacting the statute the lawmakers had in mind the methods pursued in the bureau in dealing with such claims, that claims are transmitted by claimants from all parts of the country, and that a claimant first learns of the bureau's action on his claim when he is informed of that action by the bureau, and that communications between claimants and the bureau generally are by mail Nothing in the language of the statute indicates a purpose to make a denial of the claim effective prior to delivery of notice of it at the place of the claimant's address. A regulation covering the matter of giving notice of disagreement to the claimant was in force at the time appellee's claim was acted on. That regula-

tion provides for the claimant being informed by letter of a denial of his claim, and that 'the suspension of the statute of limitations provided by Section 19 shall cease from and after the date of this letter plus the number of days usually required by the Post Office Department for the transmission of regular mail from Washington, D. C. to the claimant's last address of record.' The adoption of that regulation was the exercise of a power conferred by section 19 of the World War Veterans' Act, as amended (38 U. S. C. A. Par. 445). Boan vs. United States (D. C.) 3 F. Supp. 219. It could not reasonably have been contemplated that the period of extension of limitation would end, with the result of enabling the claimant to bring suit on his claim, prior to the receipt at claimant's last address of record of notice of the denial of his claim. Certainly it was not contemplated that it would be permissable for a claimant to institute suit on his claim proir to his receipt of information of the denial of that clai mby the director. The language used in the statute is entirely consistent with the existence of an intention that the denial of the claim become effective at the time of the receipt at the claimant's address of notice of that action. We concur in decisions to the effect that the suspension of limitation ends at that time, not before the claimant could have been aware that he had the right to bring suit on his claim. Weaver vs. United States (C. C. A.) 72 F. (2d) 20; Creasy vs. United States (D. C.) 4 F. Supp. 175."

In the case of *United States vs. Tarrer* 77 Fed. (2d) 423 which was a case where claim was filed June 27, 1931, the court said, at page 425:

"and so the insured would have been entitled to six days after the denial of his claim within which

to sue. The claim must be held to have been denied on November 20, 1931, when it reached its destination, United States vs. Walker, 77 F. (2d) 415, decided April 13, 1935, although it was not received until a later date. Stallman vs. United States (C. C. A.) 67 F. (2d) 675."

In the case of *Creasy vs. United States*, 4 Fed. Supp. 175 the claim was mailed at Roanoke Virginia, July 1, 1931 and received at the Veterans' Bureau at Washington July 3, 1931. The communication denying the claim was a letter from the Veterans' Bureau dated May 6, 1932, mailed in Washington on May 9, 1932, and received by the veteran at Roanoke, Virginia on May 10, 1932, about noon. On May 11, 1932 petition was filed with the clerk of court and on May 13, a copy was served on the United States Attorney. The court in its opinion at page 177 stated:

"It seems logical that the claim is to be taken as denied as of the date when the claimant is informed of the denial. The limitation on bringing suit is suspended while the claim is under consideration by the Bureau, but begins to run again as soon as the claim is denied; and the duty then rests upon the claimant to bring his suit within such time as remains of the period of limitation. If the act of denial of the claim imposes upon the veteran the condition that he must sue within a limited time thereafter, surely he cannot be expected to comply with this condition until such time as he has knowledge of the denial of his claim. In fact, he cannot sue until he knows that his claim has been denied and is no longer under consideration at the Bureau. Only after he has received notice of the denial can he allege the disagreement which is essential to the maintenance of a suit. I hold, therefore, that the claim is to be

taken as denied on the date when the claimant received the letter informing him of the denial. It may be argued that it is unreasonable to suppose that a letter dated May 6th in Washington did not reach Roanoke, Va., until May 10th. But the time when the letter was received is a matter to be shown by evidence, and in this case the only evidence introduced is that the letter of denial was received on May 10th, inclosed in an envelope postmarked at Washington on May 9th. With the enormous correspondence handled in the Veterans' Bureau, it is not improbable that the letter was not mailed for a day or so after May 6th. On the evidence, I must hold that the plaintiff received notice of the denial of his claim on May 10th, as stated by him."

In *Albek vs. United States,* 4 Fed. Supp. 1020, the District Court of the Eastern District of New York in discussing this question says (Page 1021):

"The date of receipt of that letter is not stated in the bill of particulars and under the decision of Creasy vs. United States (D. C.) 4 F. Supp. 175, for reasons therein convincingly stated, the duty of beginning suit would not arise until the receipt of that letter."

The case of *Wozniak, Administratrix vs. United States* No. 705 decided August 27, 1935, (— Fed. Supp. —) in the United States District Court, Western District, New York, it is respectfully submitted, correctly states the law. This decision was as follows:

"The defendant moves for a dismissal of the complaint for want of jurisdiction. Its contention is based upon the claim that the action was not commenced within the statutory period. Proof

has been taken before the court relative to the date of the commencement of the action herein.

While there are certain facts disclosed by the testimony which seem to cause some confusion as to the time when the action was commenced, I am disposed to accept the testimony given by Mr. Naples associated with counsel for plaintiff. Accepting such testimony, I am convinced that the action was commenced within the time fixed by law.

What constitutes "the filing in the Bureau of the claim in suit and the denial of the said claim by the director" (U. S. C. A., T. 38-445) has frequently had judicial construction. As I view it, the claim is filed when actually received and filed in the Bureau. The denial is effective when received by the claimant.

These views are supported by the weight of judicial authority, in accord with a reasonable interpretation of the statute, and fair as respects the rights of claimant and the Government.

The following cases all touch one or the other of the above points:

Weaver vs. United States, 72 Fed. (2d) 20, (C. C. A.).

Creasy vs. United States, 4 Fed. Supp. 175.

U. S. vs. Walker, 77 Fed. (2d) 415, (C. C. A.).

U. S. vs. Tarrer, 77 Fed. (2d) 423, (C. C. A.).

Tyson vs. U. S., 76 Fed. (2d) 533, is in conflict with the views herein expressed and these authorities. As indicated, the court does not intend to follow the views therein expressed."

It is respectfully submitted that when the Director, in a quasi-judicial proceeding, renders a decision in Washington, D. C. providing, as a part of his adjudication, that it shall not become effective until the veteran receives notice thereof, and such action is pursuant to

statutory authority, and the veteran relies upon the same and acts accordingly, certainly the government should be estopped from repudiating the Director's action.

This question was recently passed upon by Commissioner William R. Harris of the Supreme Court of the District of Columbia in the case of *Bowers vs. United States,* Law No. 82 384, who held that the denial of a claim for insurance benefits by the Insurance Claims Council did not become effective, under the regulations of the Veterans' Administration, until notice of such denial was received by the claimant. Commissioner Harr's report to the Court on this point contains a careful review of the pertinent statutes and regulations as well as of the judicial decisions covering the point. There is set forth verbatim in the appendix hereof (pages 36 to 63) a copy of his said report, together with a copy of his supplemental report, (appendix pages 64 to 68) distinguishing the case of *United States vs. Michel,* 284 U. S. 656, upon which the Government so strongly relies in the case at bar. This opinion, it is urged, correctly states the law applicable to the instant case.

In view of the foregoing it must be concluded as a matter of law that the jurisdictional "disagreement" does not become operative until the petitioner was notified of the denial of his claim in accordance with the Veterans' Administration *procedural* regulations, which were valid.

(b) WHEN WAS THIS SUIT INSTITUTED?

It was held in a war risk insurance suit by the United States Circuit Court of Appeals for the Eighth

Circuit in the case of *Walton vs. United States* (73 Fed. (2d) 15) that—

> ". . . the time of the commencement of an action at law is determined by the law of the state, in the absence of any controlling Act of Congress. (28 USCA par. 724, 725); Ex parte Connaway, Receiver of Moscow National Bank, 178 U. S. 421, 20 S. Ct. 951, 44 L. Ed. 1134; Fearing vs. Glenn (C. C. A.) 73 F. 116; International Bank & Trust Co. vs. Scott (C. C. A.) 159 F. 58."

Section 475 of the Consolidated Statutes of North Carolina provides that Civil actions shall be commenced by issuing a summons.

A Civil action is commenced when the summons is issued and the suit is pending from that date. The summons is issued when it passes from the Clerk for the purpose of being served.

Atkinson vs. Greene, 197 N. C., 118-120, 147 S. E., 811.
Morrison vs. Lewis, 197 N. C., 79, 147 S. E., 729.

It follows, therefore, that this suit was instituted on November 17, 1932 when the summons was issued.

(c) WHEN DOES THE STATUTE OF LIMITATIONS BEGIN?

Under the express provisions of Section 19, World War Veterans Act, 1924 *Supra*, the statute of limitations commences to run within six years, "*after* the right accrued for which claim is made, or within one year *after* the date of approval of this Amendatory Act." It "is suspended for the period elapsing *be-*

tween the filing in the bureau of the claim sued upon and the denial of such claim by the director." (Italics supplied.)

In *U. S. vs. Hardy* et al. 74 Fed. (2d) 841 the rule respecting the computation of time was correctly stated as:

"It is a general rule that, where the period for doing an act is to be reckoned from the happening of any other event, the day on which the event happened may be regarded as a point of time and so may be excluded from the calculation," (citing *Burnet, Commissioner vs. Willingham* L. & T. Co., 282 U. S. 437, 51 S. Ct. 185, 75 L. Ed. 448).

In Westling vs. U. S. (C. C. A. 9) 64 Fed. (2d) 464, that court at page 464 made the following comment relative to the statute relied upon by the Government in the instant case:

"Thus, in the second paragraph of section 4, the period of limitations was extended for another year 'in order that,' to quote the Senate Committee report, 'no veteran may be deprived of his right to enforce his contract of Government insurance merely because of lapse of time.'* The same paragraph re-enacted the provisions of the act of May 29, 1928, chapter 875, par. 1, 45 Stat. 964, by which the period of limitations was suspended during the pendancy of a claim in the bureau and an additional year was given to renew an action which fails for 'defect in process, or for other

*Sen. Rep. 885, 71st Cong., 2d Sess., 1930 reporting H. R. 10381. This bill was vetoed. H. Doc. 495, 71st Cong., 2d Sess., 1930. But, as finally enacted, the Act of July 3, 1930, did not alter in any respect here material the provisions to which the above-quoted remarks were addressed.

reasons not affecting the merits.' Furthermore, the statute, like the act of 1928, permits a new action notwithstanding that a judgment had theretofore been rendered against the insured, if that judgment was based upon the defense of time limitation. The liberal policy embodied in these provisions indicates the spirit in which the interpretation of this legislation, at least insofar as it affects claimants' right to judicial review, should be approached."

The law with respect to war risk insurance contracts is entitled to the most liberal construction in favor of the disabled veteran.

U. S. vs. Cox (C. C. A. 5) 24 Fed. (2d) 944, McNally, et al vs. U. S. (C. C. A. 8) 52 Fed. (2d) 440, U. S. vs. Phillips (C. C. A. 8) 44 Fed. (2d) 689, Glazow vs. U. S. (C. C. A. 2) 50 Fed. (2d) 178, U. S. vs. LePage (C. C. A. 1) 59 Fed. (2d) 165, U. S. vs. Arzner, 287 U. S. 470, White vs. U. S. 270 U. S. 175.

Therefore, it is respectfully submitted that under the statute here applicable, considered in the light of the rule of law excluding the day on which the event happened, and the liberal policy embodied in this legislation, beneficial in nature to a group of our citizens, that the statute of limitations began to run *after* November 17, 1932, and on November 17, 1932, the [redacted] suit was filed.

timely

CONCLUSION

It is therefore respectfully submitted that the instant case was begun within the time prescribed by Section 19, of the World War Veterans' Act, 1924, as amended as (a) the jurisdictional "disagreement" authorizing suit as contemplated in said section did not

exist until the time established by the director in the Veterans Administration regulations, (b) suit was instituted when summons was issued on November 17, 1932, and (c) the statute of liimtations did not begin to run until *after* [redacted] November 17, 1932; and therefore the instant suit was timely filed and the decision of the Circuit Court should be reversed.

Respectfully submitted,

WARREN E. MILLER,
SOUTHERN BUILDING,
WASHINGTON, D. C.,
Amicus Curiae.

APPENDIX

VETERANS ADMINISTRATION
Washington, D. C., December 5, 1935
Office of the Administrator of Veterans Affairs

Captain Watson B. Miller, Chairman,
National Rehabilitation Committee,
The American Legion,
1608 K Street, N. W.,
Washington, D. C.

My dear Captain Miller:

I have your letter dated November 16, 1935, stating that in presenting an amicus curiae brief to the United States Supreme Court in the case of Tyson vs. the United States, No. 192, October Term, 1935, it is deemed desirable to show certain facts with respect to the procedure and practice of the United States Veterans' Administration relative to denial of claims for total and permanent disability, and the issuance of the letter indicating disagreement, as contemplated in Section 19, World War Veterans' Act, 1924, as amended.

It is understood that the Tyson case is a suit filed by Herbert Lester Tyson (C-776, 289) against the United States on his contract of yearly renewable term insurance, and is pending in the Supreme Court on a writ of certiorari to the United States Court of Appeals for the Fourth Circuit, the question for decision being the effective date of the denial of a claim for insurance within the meaning of Section 19 of the World War Veterans' Act, as amended July 3, 1930, and the termination of the suspension of the statute of limitations provided for by said section, or, better perhaps, my authority as Administrator of Veterans' Affairs to establish by regulation the ending date of such suspen-

sion and the effective date of the denial, by providing that the denial of the claim did not become effective, and that the suspension of the statute of limitations did not terminate until notice thereof was received, or should have been received, by the claimant in the usual course of transmission of regular mail.

After stating that you have observed that for a considerable period of time after the decision of the United States Supreme Court in the cases of Lynch and Wilner versus the United States, 292 U. S., 570, 78 L. Ed. 1434, the Insurance Claims Council of the Veterans' Administration acted upon and rendered decisions denying insurance claims, but over a period of several months the veterans whose claims were acted upon during this period were not advised of such action, you request the following information and instruments:

1. The approximate number of cases in which the letter of disagreement was not issued simultaneously with the action of the Council in rendering its decision.

2. What period of time the above procedure was followed.

3. Duly certified copies of orders or instructions which were promulgated discontinuing the issuance of disagreements at or about the time the Economy Act was passed.

4. Certified copies of instructions authorizing the issuing of disagreements after June 4, 1934, when the Lynch and Wilner cases were decided by the United States Supreme Court.

5. Any changed instructions relating to these matters at any later dates, with dates of all such instructions, and the reasons the pro-

cedure did not contemplate advising the veterans of the disagreement at the time the decision denying his claim was rendered.

Answering question No. 1, you are advised that the procedure of the Veterans' Administration with reference to the issuance of so-called letters of disagreement contemplated that such letters would be issued simultaneously with the rendition of the decisions. It was not always possible to do this, and in a number of cases—which would be difficult to approximate—such letters were not issued until some days—say an average of five, of course, possibly more—subsequent to the rendition of the decisions. It was in part in recognition of the delay which might ensue between the time a decision denying a claim for insurance was rendered, and the mailing of the notice of disagreement, which induced the promulgation of the procedure with reference to the ceasing of the suspension of the statute of limitations.

Answering question No. 2, you are advised that the foregoing procedure was followed until August 23, 1935, as of which date procedure was established which would insure that such letter of disagreement would be dispatched by registered mail on the date the decision was rendered.

In compliance with your request for certified copies of orders or instructions which were promulgated discontinuing the issuance of disagreements at or about the time the Economy Act was passed, there is enclosed a certified copy of the pertinent part of a radiogram to all regional offices and combined facilities of the Veterans' Administration directing discontinuance of consideration of claims under contracts of yearly

renewable term insurance, together with a copy of a radiogram with further reference to this subject.

With reference to your request for certified copies of instructions authorizing the issuing of disagreements after June 4, 1934, there is enclosed a certified copy of a memorandum dated July 6, 1934, authorizing the resumption of consideration of claims under contracts of yearly renewable term insurance.

Complying with your request for any changed instructions relating to the subject under discussion, there are enclosed certified copies of instruction memorandum, dated November 2, 1934, discontinuing the issuance of so-called letters of disagreement; memorandum dated February 1, 1935, relating to the issuance of letters of disagreement, and memorandum dated August 23, 1935, with reference thereto.

With reference to your observation that for a considerable period of time subsequent to the decision of the Supreme Court in the Lynch and Wilner cases the Insurance Claims Council rendered decisions denying claims, but over a period of several months did not advise the veterans whose claims were acted on of the action taken, you are advised that commencing July 6, 1934, the Insurance Claims Council resumed rendering decisions under contracts of yearly renewable term insurance, and letters advising claimants of the denial of such claims were released in accordance with the procedure referred to in answering your question No. 1, and the Insurance Claims Council continued to render decisions and advise claimants of the action taken until November 2, 1934. Regional offices, however, did not resume rendering decisions.

From November 2, 1934, and until February 1, 1935, because of the attack made in the case of John H. Fred-

erick versus The United States on my authority as Administrator of Veterans' Affairs to delegate to the Insurance Claims Council authority to render final decisions on claims for insurance within the meaning of Section 19 of the World War Veterans' Act, as amended July 3, 1930, decisions rendered by the Insurance Claims Council were only tentative.

Commencing February 1, 1935, following the approval of Public Resolution No. 1, 74th Congress, to clarify the definition of disagreement in Section 19, World War Veterans' Act, 1924, as amended, the Insurance Claims Council made the above mentioned decisions final, as they could be reached in the due course of business, and after such decisions were made final, notices thereof were sent to the claimants by registered mail. The dates of those notices, however, were not, in every case, the same dates as of which the decisions became final. However, by the procedure adopted on August 23, 1935, reference to which is made in answering question No. 2, notices of disagreement of claims for insurance, filed on or prior to July 3, 1931, and/or within six years after the right accrued for which the claim was made, are mailed by registered mail on the dates the decisions are rendered.

For possible clarification on the subject, you are advised, as follows:

At the approval of the Economy Act, and for some time prior thereto, claims for benefits under policies of Government life insurance, and contracts of yearly renewable term insurance, were considered by the Veterans' Administration under the provisions of Veterans' Administration Regulations, paragraphs 3200, 3201, 3202, 3203, 3204, and 3205, and Veterans' Administration Procedure, paragraphs 3100, 3101, 3102, 3103,

3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3112, and 3113.

The foregoing regulations created the Insurance Claims Council, and delegated to it jurisdiction in determining total and permanent disability for the purpose of automatic insurance, United States Government life insurance, and yearly renewable term insurance, for the purposes of Section 19 of the World War Veterans' Act, as amended. Managers of regional offices and combined facilities were vested with concurrent jurisdiction to finally deny claims for benefits of yearly renewable term insurance because of alleged permanent and total disability, where the records showed that there was present no disability of a high degree.

The foregoing procedure, among other things (paragraphs 3107 and 3111), provided that where a decision was adverse to the allegation made by the claimant, a letter so advising him would be concurrently prepared and sent to him at his last address of record, which letter should advise the claimant of the date of which his claim was denied; that he might consider it a final denial for the purpose of instituting suit under Section 19 of the World War Veterans' Act, 1924, as amended, and that the suspension of the statute of limitations as provided by Section 19, supra, would cease from and after the date of the letter, plus the number of days usually required by the Post Office Department for the transmission of regular mail from Washington, D. C., or the regional office or combined facility, as the case might be, to the claimant's last address of record.

During the foregoing period, the Legal Service of the Veterans' Administration assisted the Department

of Justice in the preparation for trial of suits for insurance, and assisted in the trials of many of such suits, and during this period it was conceded at the trial of such suits that the suspension of the statute of limitations did not expire at the rendition of a decision denying the claim for insurance, but that there should be included in the suspension period the number of days usually required by the Post Office Department to transmit the letter advising of the denial.

Effective September 4, 1934, which was shortly subsequent to the rendition of the opinion of the Supreme Court in the Lynch and Wilner cases, the above mentioned regulations and procedure were revised. The revised regulations rescinded and delegation of authority to regional offices and combined facilities to act upon claims for insurance of any kind, and conferred exclusive jurisdiction to do so on the Insurance Claims Council.

The revised procedure, among other things, amended paragraph 3107 by omitting therefrom the words "for purposes of instituting suit under section 19 of the World War Veterans' act, 1924, as amended," and the words "Said letter should further advise the claimant that if he accepts the denial of the claim by the council as final, the suspension of the statute of limitations provided by section 19 shall cease from and after the date of this letter plus the number of days usually required by the post office department for the transmission of regular mail from Washington, D. C., to the claimants last address of record."

Paragraph 3111 was cancelled, for the reason that it applied to regional offices and facilities, whose authority to consider claims for insurance had been recalled, as aforesaid.

These amendments further provided for an extension of the appeal period from sixty days to a year.

The above quoted words were not omitted from the procedure because of any doubt in my mind as to my authority to make such provisions in the premises, but simply as an act of courtesy to the Department of Justice, to which had been transferred by Executive Order, effective September 11, 1933, all responsibility for the preparation for trial, and the trial of suits for insurance. Copies of the regulations and procedure, above referred to, are enclosed.

Very truly yours,

FRANK T. HINES,
Administrator.

Enclosures: (8)

Chg. Appropriation SALARIES & EXPENSES
V. A. 1933

RADIOGRAM PRIORITY
OFFICIAL BUSINESS—
GOVERNMENT RATES

Washington, D. C., March 17, 1933

HWB:hck
Room 1018
"Gov't. Vets. Adm."

TO ALL REGIONAL OFFICERS AND COMBINED FACILITIES

(As per attached list)

Discontinue all actions including Medical Examinations claimants yearly renewable term insurance benefits. You will immediately prepare for release to claimants whose claims for yearly renewable term insurance including automatic insurance are pending in your office. The following notice to be released upon instruc-

tions from Central Office. Copy to be filed in claimant's folder. Quote the provisions of the act of March blank entitled "An Act to Maintain the Credit of the United States Government," specifically repealed all laws granting or pertaining to yearly renewable term insurance except as to cases wherein contracts of yearly renewable term insurance have matured prior to March blank and under which payments have been commenced or in which judgments have been rendered in a court of competent jurisdiction. In any suit on a contract of yearly renewable term insurance or in which judgments may hereafter be rendered in any such suit now pending period under these provisions favorable consideration of your claim for benefits under a contract of yearly renewable term insurance is barred and no further action in connection with your claim can be taken by the Veterans' Administration period under these circumstances. I regret to advise you that further inquiry or correspondence from you seeking further consideration of this claim will necessarily be of no avail. . . .

HINES

COPY

RADIOGRAM

H. L. M. /mvm/F Room 700
March 21, 1933.

To all R. O. and combined facilities:

Act relative veterans benefits signed by President, March 20, stop. Release notices to claimants for benefits yearly renewable term insurance accordance Radiogram March 17.

Secured from records
of Mail Room 317

BREINING

July 6, 1934
MEMORANDUM

For Employees of the Council:

Term insurance cases, with the exception of those coming under the provisions of Section 305, may now be adjudicated.

H. H. Mills,
Chief, Insurance Claims Council.

From: Chief, Insurance Claims Council
To: Members of the Council
Subject: Issuance of letters of disagreement by Insurance Claims council

November 2, 1934
FDB

The issuance of letters of disagreement, Forms 909 and 909-A, and/or any letter advising that a claim for insurance has been denied is suspended from this date until further instructions are issued.

Notwithstanding the above, the Council will continue to render decisions.

A record of all cases in which claims for insurance are denied will be maintained and the files therein retained in Central Office.

Letters advising that payment of further benefits will cease either by reason of a finding of recovered ability or otherwise will continue to be sent.

/s/ H. H. Milks.

February 1, 1935

From: Chief, Insurance Claims Council
To: Members of the Council
Subject: Letters of Disagreement

Effective immediately all letters with all carbons ad-

vising that claims for insurance have been denied and/or advising that payment of insurance benefits has been discontinued, such letters being known as "Letters of Disagreement," will be routed to the Registration Clerk.

/s/ H. H. MILKS.

August 23, 1935
FDB

Acting
From: Chief, Insurance Claims Council
To: Members of the Council
Subject: Notification to claimants of denial of claims

This service is in receipt of a memorandum dated August 21, 1935, quoted below, from the Administrator to the Assistant Administrator with reference to the above subject—

> "To obviate any possibility that failure of the Veterans' Administration to notify claimants immediately of the denial of insurance claims by the Insurance Claims Council or the Board of Veterans' Appeals may shorten the time thereafter available in which to bring suit, it is necessary that notification of the denial of any insurance claim be prepared and dispatched to the claimant prior to close of business on the day when the decision denying the claim has been rendered by the Council or the Board of Veterans' Appeals.
>
> "Appropriate measures must be taken to insure compliance with this instruction in every case."

Strict compliance will be made with the Administrator's instruction. Hereafter decisions, denying claims for insurance or finding that an insured has recovered the ability to follow a substantially gainful occupa-

tion, will not be dated by the Decision Release Clerk but will be dated by the Registration Clerk. The Decision Release Clerk will refer such decisions undated to the Adjudicator who will prepare the letter (Form 909 series when in order) except that the letter so prepared will not be dated and will also omit the date of the decision. This letter with the decision and the file will be referred to the Registration Clerk who will date the decision as of the same date carried by the letter advising of the decision. The Registration Clerk will also place in the letter, the date of the decision.

Particular attention must be given that the instruction from the Administrator provides that the letter notifying the claimant of the denial must carry the same date as the decision and be mailed before the close of business on said date.

Hereafter decisions of the Council will not become final until dated.

/s/ A. J. McIntyre, M. D.

IN THE

SUPREME COURT OF THE DISTRICT OF COLUMBIA

Law No. 82284

Filed July 9, 1935

EDWARD J. BOWERS,
Plaintiff,
vs.
UNITED STATES OF AMERICA,
Defendant.

SUIT FOR WAR RISK INSURANCE

REPORT OF COMMISSIONER UPON JURISDICTIONAL QUESTIONS RAISED BY DEFENDANT'S PLEAS TO THE AMENDED DECLARATION

This is a suit for the recovery of monthly disability benefits under plaintiff's $10,000 contract of war risk term insurance.

The amended declaration contains two counts. The

first count is predicated upon plaintiff's having become permanently and totally disabled on, to wit, June 1, 1919, on which date his insurance is alleged to have been in force through the payment of premiums by plaintiff. The second count is predicated upon plaintiff's becoming so disabled on February 1, 1920 to which date it is alleged his said insurance was continued in force by reason of circumstances bringing it within the revival provisions of Section 408 of the War Risk Insurance Act and Section 305 of the World War Veterans' Act, 1924, as amended.

In each of said counts it is alleged that on, to wit, June 29, 1931, plaintiff made written demand of the Veterans' Administration and that said claim was denied by the Administrator of Veterans' Affairs on January 19, 1933. Suit was instituted January 20, 1933.

In its pleas to the amended declaration defendant avers: (1) That the claims sued upon were not denied by the Administrator of Veterans' Affairs, or by any one acting in his name, as required by the provisions of Section 19 of the World War Veterans' Act, 1924, as amended July 3, 1930; and (2) That the claims sued upon are barred by the limitations on suit contained in said Section 19, as so amended. And as to each count of the amended declaration, defendant further says:

> . . . defendant further denies that the plaintiff filed claim or demand for the payment of War Risk Insurance benefits in the United States Veterans Administration on June 29, 1931, or at any other time prior to July 2, 1931; and avers that the claim filed on July 2, 1931, was denied by the Insurance Claims Council of the United States Veterans Administration on January 13, 1933,

and the plaintiff and his then attorney were notified of said denial on, towit, January 17, 1933.

A stipulation as to the jurisdictional questions raised by defendant's pleas has been filed, which sets out the correspondence between plaintiff and the Veterans' Administration with respect to his claim for insurance benefits.

At the hearing on said issues before me it was verbally stipulated by Mr. Jordan R. Bentley, plaintiff's attorney, and Mr. Frank Smith, appearing for defendant, that the court might take the dates of receipt, stamped or written in the exhibits attached to the stipulation, as the actual dates of the receipt by the addressees of the papers so marked.

STATUTES INVOLVED

Section 19 of the World War Veterans' Act, 1924, as amended July 3, 1930, provides, in part:

> Sec. 19. In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States. . . .
>
> No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after the date of approval of this amendatory Act, whichever is the later date, . . . *Provided further*, That this limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director. . . .

> The term "claim" as used in this section, means any writing which alleges permanent and total disability at a time when the contract of insurance was in force, or which uses words showing an intention to claim insurance benefits and the term "disagreement" means a denial of the claim by the director or some one acting in his name on an appeal to the director. . . .

The Joint Resolution of Congress approved January 28, 1935, entitled, "Joint Resolution to clarify the definition of disagreement in section 19, World War Veterans' Act, 1924, as amended," provides:

> That a denial of a claim for insurance by the Administrator of Veterans' Affairs or any employee or agency of the Veterans Administration heretofore or hereafter designated therefor by the Administrator shall constitute a disagreement for the purposes of section 19 of the World War Veterans' Act, 1924, as amended (U. S. C., Supp. VII, title 38, sec. 445). This resolution is made effective as of July 3, 1930, and shall apply to all suits now pending against the United States under the provisions of section 19 of the World War Veterans' Act, 1924, as amended, and any suit which has been dismissed solely on the ground that a denial as described in this resolution did not constitute a disagreement as defined by section 19 may be reinstated within three months from the date of enactment of this resolution.

Section 5 of the World War Veterans' Act, 1924, as amended, provides:

> Sec. 5. The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for

that purpose shall have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purposes, and shall decide all questions arising under this Act and all decisions of questions of fact affecting any claimant to the benefits of Titles II, III, or IV of this Act, shall be conclusive except as otherwise provided herein. All officers and employees of the bureau shall perform such duties as may be assigned them by the director. All official acts performed by such officers or employees specially designated therefor by the director shall have the same force and effect as though performed by the director in person. Wherever under any provision or provisions of the Act regulations are directed or authorized to be made, such regulations, unless the context otherwise requires, shall or may be made by the director. The director shall adopt reasonable and proper rules to govern the procedure of the divisions and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits of compensation, insurance, vocational training or maintenance and support allowance provided for in this Act, the forms of appplication of those claiming to be entitled to such benefits, the methods of making investigations and medical examinations, and the manner and form of adjudications and awards.

Section 2 of the Consolidation Act, approved July 3, 1930 (38 U. S. C., Supp. 11a) provides, in part:

> Sec. 2. There shall be at the head of such Veterans' Administration an administrator to be known as the Administrator of Veterans' Affairs, . . . Upon the establishment of such Veterans' Administration all the functions, power and duties

now conferred by law upon . . . the Director of the United States Veterans' Bureau are hereby conferred upon and vested in the Administrator of Veterans' Affairs. . . .

REGULATIONS OF THE ADMINISTRATOR OF VETERANS' AFFAIRS IN REGARD TO THE ESTABLISHMENT AND FUNCTIONS OF THE INSURANCE CLAIMS COUNCIL

The Insurance Claims Council was established in the Adjudication Service of the Veterans' Administration by Regulations of the Administrator (paragraphs R-1000 and 1310-1312, Regulations and Procedure), effective March 16, 1931. On July 1, 1931, said Council was transferred to the Insurance Service by the Administrator, and said paragraphs R-1000 and 1310-1311 were cancelled by paragraphs R-3200-3205 and 3100-3109, effective November 1, 1931.

In January 1933, when the decision of the Insurance Claims Council here involved was rendered, the pertinent provisions of the last-mentioned regulations, as amended prior to said time, were:

R-3200 ESTABLISHMENT OF INSURANCE CLAIMS COUNCIL.—There is hereby established in the insurance service, central office, an insurance claims council which will be in charge of a chief who shall be responsible to the director of insurance for the proper functioning of such council. The council shall be composed of such other personnel as may be found necessary for the purpose of carrying on the duties and functions assigned thereto. (November 1, 1931).

R-3201 DUTIES OF THE INSURANCE CLAIMS COUNCIL—(A) The insurance claims

council is vested with exclusive jurisdiction in determining total and permanent disability for the purpose of automatic insurance, United States Government life insurance, and yearly renewable term insurance (except that in said yearly renewable term insurance for the purposes of Section 19 of the World War veterans' act, as amended, the managers of regional offices and combined facilities are vested with concurrent jurisdiction to finally deny the type of claims specified in subparagraph 1 hereof). (August 1, 1932).

R-3204 APPEAL FROM DECISION BY INSURANCE CLAIMS COUNCIL—Where the insurance claims council finds that permanent and total disability does not exist as alleged, such denial shall be final. However, the veteran or his representative shall have the right of appeal to the Administrator from any finding made pursuant to the authority contained in paragraphs R-3200 to 3203 providing such appeal be exercised within sixty days from the date of receipt of notice of the final action of the council. Such appeal must be in writing and otherwise comply with the regulations governing appeals to the Administrator. (November 1, 1931).

3106 DECISIONS RENDERED BY INSURANCE CLAIMS COUNCIL—Decisions of the insurance claims council will be prepared and signed in triplicate by not less than two members of the council. The original copy of the decision will be placed in the central office folder, one carbon copy will be placed in the regional office folder, and the other carbon copy will become a part of the permanent records of the insurance claims council. The claimant and other interested parties will be informed of the decision rendered by the council. (November 1, 1931).

3107 APPEAL FROM DECISIONS RENDERED BY INSURANCE CLAIMS COUNCIL

—If a decision is rendered by the insurance claims council adverse to the allegation made by the claimant, a letter so advising the claimant will be concurrently prepared and sent to the claimant at his last address of record. Said letter will advise the claimant the date on which the council denied the claim, and that the claimant may consider such denial final for purposes of instituting suit under Section 19 of the World War veterans' act, 1924, as amended. Said letter should further advise the claimant that if he accepts the denial of the claim by the council as final, the suspension of the statute of limitations proveded by section 19 shall cease from and after the date of this letter plus the number of days usually required by the post office department for the transmission of regular mail from Washington, D. C., to the claimants last address of record, and that his case folder has been forwarded to the appropriate office or station (giving name and address of office or station) and that any future inquiries should be directed to that office or station. If an appeal is filed the case file together with the appeal will be forwarded by the regional office or combined facility to the administrator, through the director of insurance, who shall at the time of forwarding the same indicate his approval or disapproval of the decision of the insurance claims council, from which appeal is taken. (November 1, 1931).

COMMISSIONER'S OPINION

I

As to the Plea of No Disagreement

Defendant's plea that the claims sued on were never denied by the Administrator of Veterans' Affairs, nor by any one acting in his name on appeal to him, as re-

quired by Section 19 of the World War Veterans Act, 1924, as amended, was not pressed by counsel for the Government at the hearing before me, presumably because the Joint Resolution of Congress approved January 28, 1935, clarifying the definition of the term "disagreement", as used in said section, had removed that objection.

There can be no doubt, under the stipulated facts and the regulations, that the claim for insurance benefits embodied in the letter dated June 29, 1931 addressed by plaintiff's then attorney, Warren E. Miller, to the Administrator of Veterans' Affairs (Exhibit A to stipulation) was properly and finally denied by an "employee or agnecy of the Veterans' Administration" designated for the purpose by the Administrator and that such denial constituted the necessary jurisdictional disagreement.

I refer, in this connection, to the letters of denial, based upon the decision of the Insurance Claims Council dated January 13, 1933, written plaintiff and his said attorney by H. L. McCoy, Director of Insurance of the Veterans' Administration, dated January 16, 1933 and January 19, 1933, and set out as Exhibits B, C, E and F to the stipulation.

An examination of the regulations of the Administrator set out above will disclose that the Insurance Claims Council was authorized by the Administrator to give final denials (par. R-3204) and that the Director of Insurance was the official to whom the Council was responsible (par. R-3200) and therefore the one authorized to send letters to claimants advising them of such denials (par. 3107).

II

As to the Statute of Limitations

Defendant's plea of the statute of limitations raises a more serious issue. It involves the question when an adverse decision of the Insurance Claims Council takes effect as a denial of a claim for insurance benefits within the meaning of the provision of Section 19 of the World War Veterans' Act, 1924, as amended, providing for the suspension of the limitation on suit "for the period elapsing between the filing in the bureau of the claim sued on and the denial of said claim by the director."

It appears from the written stipulation in this case that the letter of plaintiff's then attorney, Warren E. Miller, dated June 29, 1931, claiming insurance benefits (Exhibit A to the stipulation) was not received in the Veterans' Administration until July 2, 1931, according to the earliest date of receipt stamped thereon, when all but one day of the year from July 3, 1930 allowed by the statute for filing such a claim had expired (the six-year period also allowed therefor-i.e., six years from the happening of the contingency on which the claim is founded-having previously expired).

It was therefore incumbent upon plaintiff to institute suit on said claim within one day after the denial of said claim "by the director," which phrase in this instance, as the result of the operation of the Consolidation Act of July 3, 1930 and the Joint Resolution approved January 28, 1935, means a denial of said claim by the Administrator of Veterans' Affairs or some employee or agency authorized by him to give such denials.

The decision of the Insurance Claims Council denying plaintiff's claim was rendered January 13, 1933, according to the letter addressed to plaintiff by the Director of Insurance of the Veterans' Administration (Exhibit B).

Said letter was dated January 16, 1933 and addressed to plaintiff at New Haven, Connecticut. A carbon copy of said letter (Exhibit E) was also enclosed in a letter of the same date sent by said Director of Insurance to plaintiff's then attorney, Warren E. Miller, at Washington, D. C. (Exhibit c). Under date of January 19, 1933, said official again wrote Attorney Miller at Washington D. C., of said decision of the Insurance Claims Council (Exhibit F).

The two letters of the Director of Insurance addressed to Attorney Miller at Washington, D. C., (Exhibits C and F) and the carbon copy of the letter to plaintiff (Exhibit E) are stamped "Received January 20, 1933." The letter addressed to plaintiff at New Haven, Connecticut, (Exhibit B) is stamped "Received January 23, 1933."

As previously stated, it was verbally stipulated by counsel at the hearing before me that all of said letters were received by the addressees on the dates shown by the notations stamped thereon. Said verbal stipulation may be accepted by the Court, except as to the notation on the original of the letter of the Director of Insurance to the plaintiff dated January 16, 1933 which is stamped "Received January 23, 1933." I am advised by Mr. Jordan R. Bentley, plaintiff's present attorney, that that notation was made on said letter by Mr. Miller, plaintiff's former attorney, and indicates the date on which the latter received said letter by mail from the plaintiff, not the date when plain-

tiff received it by mail from the Veterans' Administration. I infer, however, that said letter was not mailed to plaintiff until January 19th, and was not received by the plaintiff before January 21st.

My conclusions therefore is that the earliest date on which plaintiff, or his representative authorized to receive notice, is shown by the stipulated facts to have received from the Director of Insurance notice of said adverse decision of the Insurance Claims Council on his claim was January 20, 1933, when his attorney, Mr. Miller, received the two letters from the Director of Insurance on January 16th and January 19th, as well as the copy of said official's letter to plaintiff of January 16th.

Counsel for the Government contend that the adverse decision of the Insurance Claims Council on plaintiff's claim became effective as a denial upon the rendition of said decision—January 13, 1933. There seems to be but lttle judicial support for this contention, whereas a number of Federal courts have held that decisions of the Council and other agencies of the Veterans' Administration become effective only upon receipt by the claimants of notice thereof, and one decision seems to hold that the denial is effective on the date of the letter advising the claimant of the decision. These decisions are reviewed hereinafter.

Since, as above pointed out, there was but one day left in which plaintiff could institute suit after receiving a denial of his claim, it is obvious that if said denial was effective January 13, 1933, the date of the decision of the Insurance Claims Council, or January 16, 1933, the date of the letter of denial addressed to plaintiff, the statute had run before suit was instituted. But if the denial was not effective until the date of receipt

of notice of the denial by Attorney Miller on January 20, 1933, the suit, which was filed the same day, was timely brought.

In my opinion, under the acts of Congress and the regulations of the Administrator of Veterans' Affairs in force at the time, the decision of the Insurance Claims Council of January 13, 1933, became effective as a denial of plaintiff's claim for the purpose of ending the suspension of the running of the period of limitations and permitting the institution of suit on the claim, upon the receipt of notice thereof by Attorney Miller on January 20, 1933, and not before.

The World War Veterans' Act, 1924, as amended, and the Joint Resolution of Congress of January 28, 1935, do not specify the form in which denials of claims for insurance benefits shall be given. They merely state who may give such denials. However, Section 5 of the World War Veterans' Act, 1924 (set forth above), provides that "the director shall adopt reasonable and proper rules . . . to regulate and provide for . . . the forms of applications of those claiming to be entitled to such benefits, . . . and the manner and form of adjudications and awards." Insurance, it will be noted, is one of the benefits referred to by the phrase "such benefits" just quoted. The authority given, in my opinion, embraces authority to the Director to regulate the method and form of denials of claims for insurance benefits, including the time when such denials shall take effect. Since the creation of the Veterans' Administration said authority has been held by the Administrator of Veterans' Affairs under the terms of Section 2 of the Consolidation Act of July 3, 1930, set forth above. The regulations which have been adopted under such authority

and which are pertinent in the case at bar are contained in paragraphs R-3201, R-3204, 3106 and 3107 of the Administrator's Regulations and Procedure, set forth above.

Paragraph R-3201 vests the Insurance Claims Council with jurisdiction in determining total and permanent disability for insurance purposes. Paragraph R-3204 provides that when the Insurance Claims Council finds that permanent and total disability does not exist, such denial shall be final, subject to the right of appeal to the Administrator therein granted to claimants.

Paragraph 3107 contains the regulations as to notice which are directly involved in the determination of the question of the effective date of a denial. Paragraphs 3106 and R-3204 also throw light on the subject.

Paragraph 3107 requires notice of an adverse decision by the Insurance Claims Council upon his claim to be given to the claimant, and provides when and how such notice shall be given, as well as what the claimant shall be advised with respect to its effect on the institution of suit and the suspension of the running of the limitation on suit caused by the filing of the claim in the Veterans Administration.

The requirement in said paragraph that the claimant shall be *advised by letter* of the adverse decision of the Insurance Claims Council implies that the denial is not effective until the claimant is so advised, which means upon receipt by him (or his representative) of the letter containing such advice.

That this is the proper conclusion to draw seems to be indicated also by the provision in said paragraph 3107 that the claimant shall be advised that the suspension of the statute of limitations shall cease at the time

designated therein "if he *accepts* the denial of the claim by the council as final." The claimant certainly cannot "accept" or reject a denial of which he has not been notified, and therefore it must have been the intent of the Administrator to make such denial effective upon actual receipt of notice thereof by the claimant or his representative.

Paragraphs 3106 and R-3204 also support this conclusion. The first provides that "the claimant and other interested parties *will be informed* of the decision rendered by the council." (italics mine). The latter, in giving the claimant the right of appeal from the decision of the Insurance Claims Council, makes such right conditional upon appeal being "exercised within sixty days from *the date of receipt of notice* of the final action of the council" (italics mine). The provision quoted from paragraph 3204, it is to be noted, was incorporated in the letter of the Director of Insurance to plaintiff (Exhibit B).

It might be argued that the provision in paragraph 3107 that said letter should further advise the claimant that, if he accepts the denial of the claim by the council as final, "the suspension of the statute of limitations provided by section 19 shall cease from and after the date of this letter plus the number of days usually required by the post office department for the transmission of regular mail from Washington D. C., to the claimants last address of record," would make the denial effective, in ending the suspension of the statute of limitations, upon the day designated irrespective of whether the letter had actually been delivered or whether the letter had been mailed on the day it was dated. But to so hold would be to give greater effect to said provision that obviously was in-

tended, and I doubt if such a view could be upheld even if shown to have been intended by the Administrator.

This provision of the regulations was evidently framed upon the assumption that the notice to a claimant of the denial of his claim would be mailed upon the date it was dated and would be delivered in the regular course of mail at the claimant's last address of record in the bureau. At most such a regulation would only create a rebuttable presumption of fact as to when the plaintiff received such notice, upon proof that it was actually mailed on its date. (22 Corpus Juris 98, Evidence, Sec. 38, and cases cited.) In the case at bar no such presumption can be indulged, since the dates of the receipt of the various letters advising the plaintiff and his attorney of the denial of his claim have been stipulated. Furthermore, there is no evidence or stipulation as to the dates when said letters were mailed.

DECISIONS INVOLVING THE DETERMINATION OF THE EFFECTIVE DATE OF A DENIAL OF A CLAIM FOR INSURANCE BENEFITS.

In each of the cases cited below the court was faced with the precise question now before this court, namely, as to when the denial "by the director" of a claim for insurance benefits occurs, within the meaning of the provision in Section 19 of the World War Veterans' Act, 1924, as amended July 3, 1930. The better reasoned opinions in these cases hold that decisions of the agencies of the Veterans' Administration do not become effective as denials of insurance claims until the claimants receive notice thereof.

Thus, in *United States vs. Walker,* decided April 13,

1935, 77 F (2d) 415, the Circuit Court of Appeals for the Fifth Circuit expressed itself on the point in question as follows:

> . . . Under the statute the period of limitation was extended beyond July 3, 1930, the date of the enactment of the statute, for the period elapsing between the filing in the bureau of the claim sued upon and the denial of that claim by the director. The claim sued upon having been filed in the bureau on June 26, 1931, and this suit having been brought on June 6, 1932, the suit was brought within the time allowed if within the meaning of the statute the denial of the claim by the director became effective upon appellee's receipt on May 31, 1932, of notice of that action. Appellant contends that the denial became effective on the day it was dated, May 27, 1932. In our opinion that contention is not sustainable. It is to be noted that under the statute the period of extension begins with: "the filing in the bureau of the claim sued upon," and ends, not with the filing of the order denying the claim, but with "the denial of said claim by the director." It well may be supposed that in enacting the statute the lawmakers had in mind the methods pursued in the bureau in dealing with such claims, that claims are transmitted by claimants from all parts of the country, and that a claimant first learns of the bureau's action on his claim when he is informed of that action by the bureau, and that communications between claimants and the bureau generally are by mail. Nothing in the language of the statute indicates a purpose to make a denial of the claim effective prior to delivery of notice of it at the place of the claimant's address. A regulation covering the matter of giving notice of disagreement to the claimant was in force at the time appellee's claim was acted on. That regulation provides for the claimant being informed by letter

of a denial of his claim, and that "the suspension of the statute of limitations provided by Section 19 shall cease from and after the date of this letter plus the number of days usually required by the Post Office Department for the transmission of regular mail from Washington, D. C. to the claimant's last address of record." The adoption of that regulation was the exercise of a power conferred by Section 19 of the World War Veterans' Act, as amended. 38 U. S. C. A. Section 445, *Boan vs. United States,* 3 Fed. Supp. 219. It could not reasonably have been contemplated that the period of extension of limitation would end, with the result of enabling the claimant to bring suit on his claim, prior to the receipt at claimant's last address of record of notice of the denial of his claim. Certainly it was not contemplated that it would be permissible for a claimant to institute suit on his claim prior to his receipt of information of the denial of that claim by the director. The language used in the statute is entirely consistent with the existence of an intention that the denial of the claim become effective at the time of the receipt of the claimant's address of notice of that action. We concur in decisions to the effect that the suspension of limitation ends at that time, not before the claimant could have been aware that he had the right to bring suit on his claim. *Weaver vs. United States,* 72 Fed. (2) 20; *Creasy vs. United States,* 4 Fed. Supp. 175.

The regulation referred to in said opinion is paragraph 3107 of the Administrator's Regulations and Procedure, set forth and discussed above and upon which your Commissioner's opinion is based.

In *Boan vs. United States* (D. C., Idaho), 3 F Supp. 219, cited in *United States vs. Walker,* supra, after the evidence on the point was in, the defendant moved

to dismiss the suit on the ground that no disagreement had been proven. The opinion on said motion shows that plaintiff's claim for insurance benefits had been denied by the Insurance Claims Council on July 21, 1931 and plaintiff notified thereof; that under the regulations of the Veterans' Administration then in force, the Insurance Claims Council did not have authority to give a disagreement; that subsequently the regulations set forth above, which give the Insurance Claims Council such authority, were promulgated; that thereafter the Director of Insurance wrote plaintiff on November 25, 1931 advising him that he might consider the denial of the Insurance Claims Council rendered July 21, 1931, final for the purpose of instituting suit, the letter following in form the letter to plaintiff in the case at bar (Exhibit B). Judge Cavanah, after discussing the authority embodied in the statutes and regulations, then said:

> . . . They write this letter, after those regulations are in force, and which are binding here, telling him that he may now consider the action of the insurance claims council, back in July, as their action now. They amend the letter of July 21, 1931, saying, "The letter forwarded to you under date of July 21, 1931, is amended accordingly." They adopt that as the record of the council, and send this man word that his claim is disallowed on November 25, 1931. He brings his suit on December 21, 1931, within forty-one days, under the law as I interpreted it in the Carson case, from the time he received final action, and I now interpret that this final action or disagreement did not occur until receipt of the letter of November 25, 1931. . . . .

In *Weaver vs. United States,* 72 F. (2d) 20, decided June 28, 1934, the Circuit Court of Appeals for the Fourth Circuit (then composed of Circuit Judges Northcott and Soper and District Judge Chesnut) said, speaking by Judge Chesnut:

> In our opinion the ruling appealed from was correct. Obviously, under the statute, the suit was too late unless saved by the proviso in the section. The effect of this proviso is that the statute of limitations was suspended for the number of days, prior to and including July 3, 1931, that the claim was pending in the Bureau and the plaintiff was entitled to bring suit within that number of days after notice of disallowance of his claim by the Bureau. . . .

After holding that it did not sufficiently appear from the established facts that the claim was filed until after July 3, 1931, the opinion of said court proceeds (italics mine):

> Even if it could fairly be found from the facts stated that the plaintiff's claim was received by the Bureau on July 3, 1931, it could not be said that the statute was suspended for more than one day; and therefore after the denial of liability by the Bureau and *receipt of notice thereof* by the plaintiff he had only one day thereafter at the most to institute suit. . . .

This opinion is particularly interesting because, as will be seen later, said Circuit Court of Appeals, when composed of three other judges, held that notice of the denial of a claim by the Insurance Claims Council was not necessary. (*Tyson vs. U. S., infra.*)

In Creasy vs. United States, (D. C., Virginia), 4 F.

Supp. 175, decided January 31, 1933, Judge Paul said:

> It is necessary here to determine (1) whether a claim is deemed to be filed as of the date when the claimant mails it to the Bureau or as of the date when it is received by the Bureau; and (2) whether it is to be treated as denied as of the date when the proper officer of the Bureau set down in writing his denial or as of the date when the claimant received such writing.
>
> On the latter of these questions, I have little doubt. It seems logical that the claim is to be taken as denied as of the date when the claimant is informed of the denial. The limitation on bringing suit is suspended while the claim is under consideration by the Bureau, but begins to run again as soon as the claim is denied; and the duty then rests upon the claimant to bring his suit within such time as remains of the period of limitation. If the act of denial of the claim imposes upon the veteran the condition that he must sue within a limited time thereafter, surely he cannot be expected to comply with this condition until such time as he has knowledge of the denial of his claim. In fact, he cannot sue until he knows that his claim has been denied and is no longer under consideration at the Bureau. Only after he has received notice of the denial can he allege the disagreement which is essential to the maintenance of a suit. I hold, therefore, that the claim is to be taken as denied on the date when the claimant received the letter informing him of the denial.
>
> . . .

Judge Paul then went on to discuss the relationship between the date of the letter and its receipt, saying:

> It may be argued that it is unreasonable to suppose that a letter dated May 6th in Washing-

ton did not reach Roanoke, Va., until May 10th. But the time when the letter was received is a matter to be shown by evidence, and in this case the only evidence introduced is that the letter of denial was received on May 10th, inclosed in an envelope postmarked at Washington on May 9th. With the enormous correspondence handled in the Veterans' Bureau, it is not improbable that the letter was not mailed for a day or so after May 6th. On the evidence, I must hold that the plaintiff received notice of the denial of his claim on May 10th, as stated by him.

In Snow, Admr., vs. United States (D. C. North Carolina), defendant had moved to dismiss the action because barred by the statute of limitations. The opinion on said motion, dated May 14, 1934, shows that it was stipulated that the letter of disagreement was dated November 17, 1932 and received November 20, 1932, and that November 20, 1932 was on Sunday. The opinion then states:

> From the foregoing facts the Court finds that the statute of limitations ceased to run on the claim on the 15th day of June 1931, and that it did not begin to run again until Nov. 21, 1932, for the reason that November 20th was on Sunday, the day when the denial was received.
>
> The Court further finds that the plaintiff had nineteen days left for the making of a demand or commencing her action before the claim was filed in the Veterans Bureau, and it further finds that the action was commenced on the nineteenth day after the receipt of the denial, and that the claim is not barred by the statute of limitations.

In *Albek vs. United States* (D. C., New York), 4 F. Supp. 1020, decided November 10, 1933, defendant

moved to dismiss the suit because no disagreement existed at the time the action was brought, the motion being based on plaintiff's bill of particulars. In his opinion, Judge Byers states that said bill of particulars shows that there had been a denial by the Insurance Claims Council from which appeal had been taken, resulting in a letter from the Director of Insurance, dated October 7, 1932, affirming the conclusions of the Insurance Claims Council, and that said letter was received on or about October 12, 1932. Judge Byers then states (italics mine):

> The contention offered by the *defendant* is that there was no disagreement until the date of the receipt of the last mentioned letter, which embodied a decision of the Administrator's Board of Appeals, and consequently, when the petition was filed on September 6, 1932, no disagreement existed.
>
> There seems to be no escape from the conclusion that this is so. Had the plaintiff not taken an appeal from the letter dated May 21, 1932, he might have urged (without success if Harp vs. U. S. (D. C.) 2 F. Supp. 32, were followed) that it constituted a disagreement sufficient to sustain his petition; but, in order to do that, he would have to show that the petition was filed within four days after receipt of that letter. While the presumption is that that letter was delivered in due course and long prior to September 2, 1932, the plaintiff would be given an opportunity to show the date of actual receipt and the matter would not be disposed of on motion; but, as he relies upon the letter dated October 7, 1932, for his disagreement, by moving to have this cause postdated as to its filing, it is apparent that the defendant's motion must be decided upon the theory held in common by the plaintiff and the de-

fendant, that the disagreement did not arise until the receipt of the letter of October 7, 1932.

The only reasoned decision in support of the Government's contention that the adverse decision of the Insurance Claims Council on plaintiff's claim became effective as a denial upon the rendition of said decision, is that of the Circuit Court of Appeals for the Fourth Circuit in *Tyson vs. United States*, 76 F. (2d) 533, decided April 2, 1935. In my opinion, however, said decision is not well reasoned. The court, speaking by Judge Parker, there said:

> . . . The running of the statute is suspended when the claim is filed in the Bureau of War Risk Insurance of the Veterans Administration, not when it is deposited in the mails. *Weaver vs. U. S.* (C. C. A. 4th) 72 Fed. (2d) 20. And it is denied by the director when he takes action denying it, not when notice of denial is received by the insured. *Corn vs. United States* (C. C. A. 10th) 74 Fed. (2d) 438; *U. S. vs. Thomson*, (C. C. A. 10th) 71 Fed. (2d) 860; *U. S. vs. Gower* (C. C. A. 10th) 71 Fed. (2d) 366; *Stallman vs. U. S.* (C. C. A. 8th) 67 Fed. (2d) 675; *Roberts vs. U. S.* (C. C. A. 10th) 66 Fed. (2d) 273; *Hunnewell vs. U. S.* 2 Fed. Supp. 389; *Hipkins vs. U. S.*, 1 Fed. Supp. 505. We have considered the reasoning to the contrary of this last proposition in *Creasy vs. U. S.*, 4 Fed. Supp. 175, but we are not convinced by it. The language of the statute is clear and unambiguous. The statute is "suspended for the period elapsing between the filing in the Bureau of the claim sued upon and the denial of said claim by the director." Only Congress can prescribe the terms upon which the Government may be sued; and when it has done so clearly and unequivocally, neither the bureaus charged with the administra-

> tion of the act nor the courts may add to or take from these terms. Congress might have provided for the suspension of the statute until the insured should be notified of the rejection of his claim. It has not done so, but has provided for suspension only during the period between the filing of the claim and its denial by the director.

Said court, while finding support in its decision in the Weaver case, supra, upon the point that the running of the statute of limitations is suspended when the claim is filed in the Bureau and not when it is deposited in the mail, over-looked or ignored the fact that it was also held in the Weaver case that the suspension was not lifted until the claimant had received notice of the denial of his claim, although the court did refer to the decision of the District Court in the Creasy case, supra, which expressed the same view. As pointed out above, said Circuit Court of Appeals, when it decided the Tyson case, was composed of an entirely different group of judges from that which decided the Weaver case.

Furthermore, the decisions cited by Judge Parker do not entirely support the ruling that a claim "is denied by the director when he takes action denying it."

Thus, in the case of *United States vs. Gower,* 71 F. (24d) 366, decided by the Circuit Court of Appeals for the Tenth Circuit, the view taken by Judge Parker is suggested rather than decided, the point not being material. Nor does the court refer to the regulations or reason the matter out carefully. All that it says, in answer to plaintiff's contention that he personally had no knowledge of the denial of his claim until January 18, 1932, is:

That may be true, but we see no reason why he should not be bound as of the date of the denial of the claim, which is in accord with the plain meaning of the statute. But whether we take that date or the date on which notification came to his attorney, the bar had ran when the suit was instituted on January 20, 1932. Notification to his attorney, who carried on correspondence with the Veterans' Bureau concerning the claim, was notification to him.

In the case of *United States vs. Thomson*, 71 F. (2d) 860, said Circuit Court of Appeals for the Tenth Circuit chose the date of the letter of denial rather than the date of receipt of said letter as the date of denial. The only information apparently before the court as to the denial was that contained in the amended complaint which alleged that the claim "was rejected by letter dated September 19, 1932, and that such letter was received in due course of mail on September 22, 1932." It does not appear from said decision by what agency the claim referred to was rejected.

In the cases of *Roberts vs. United States* (C. C. A. 10th) 66 F. (2d) 273, *Corn vs. United States* (C. C. A. 10th) 74 F. (2d) 438, *Hipkins vs. United States* (D. C., Md.) 1 F. Supp. 505, and *Hunnewell vs. United States* (D. C., N. H.) 2 F. Supp. 389, cited in the Tyson case, it does not appear that the question of notice was actually passed on, the opinions merely referring to the claims having been denied on certain dates, without stating whether those dates are the dates of the action by the director, or the dates of the letters of denial or the dates of the receipt of such letters.

And in the case of *Stallman vs. United States*, 67 F. (2d) 675, decided November 10, 1933, the Circuit Court of Appeals for the Eighth Circuit, while taking the

view held by Judge Parker in the Tyson case, states that no regulation requiring notice applicable at the time of the denial involved in the Stallman case had been called to their attention, although pointing out that such a regulation (paragraphs 3106 and 3107, set forth above) had since been promulgated. In this connection the court said:

> The plaintiff was charged with knowledge that he only had six days left in which to bring his suit after disagreement because of his own delay of about twelve years before taking steps to assert any claim on his policy; and it was, therefore, incumbent upon him to acquaint himself with the action of the director on his claim so that he could act promptly and sue within six days if he wanted to. It does not appear that he took any particular steps to this end, or that his failure to learn of the rejection of the claim was chargeable to the neglect of official duty. No formal notice was required to be given to him by the statute, nor has there been called to our attention any regulation requiring such notice applicable at the time. A regulation covering the matter of notice of disagreement to be mailed to the veteran has since been promulgated (Decisions Insurance Claims Council No. 1306, No. 3107, November 1, 1931).

The plain implication of this statement by said Circuit Court of Appeals is that if the regulation referred to by that court had been in force at the time of the denial there involved, a different conclusion would have been reached.

CONCLUSION

For the reasons stated above, it is my opinion that the necessary jurisdictional disagreement existed at

the time this suit was brought and the suit is not barred by the statute of limitations.

I therefore recommend that the jurisdictional defenses interposed by defendant's pleas to the amended declaration be overruled.

Respectfully submitted,

WILLIAM R. HARR,
Commissioner, Veterans' Cases.

IN THE

SUPREME COURT OF THE DISTRICT OF COLUMBIA

Law No. 82284

Filed July 10, 1935

EDWARD J. BOWERS.
Plaintiff,
vs.
UNITED STATES OF AMERICA,
Defendant.

SUIT FOR WAR RISK INSURANCE

SUPPLEMENTAL REPORT OF COMMISSIONER UPON THE JURISDICTIONAL QUESTIONS RAISED BY DEFENDANT'S PLEAS TO THE DECLARATION.

Since filing my report upon the jurisdictional questions raised by defendant's pleas to the declaration, counsel for the Government has called my attention to the case of *United States vs. Michel,* 282 U. S. 656,

which they believe strengthens the view announced in *Tyson vs. United States*, 76 F. (2d) 533, that a claim for war risk insurance is denied "by the director," within the meaning of Section 19 of the World War Veterans' Act, when the director "takes action denying it, not when notice of denial is received by the insured."

In my opinion, the statute involved in the Michel case is radically different from that involved in the case at bar, and for that reason the decision in the Michel case neither supports the Tyson case, nor opposes the view expressed by me in my report filed July 9th.

The Michel case involved the construction of Section 3226 of the Revised Statutes relating to the collection of the revenue, which, as quoted by the Supreme Court in its opinion, provides:

> No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected . . . until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue. . . . No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax . . . unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail.

Construing said statute, the Supreme Court said:

> By this statute the United States waived its sovereign immunity from suit. The permission to sue is conditioned on the filing of a claim and the lapse of six months or the disallowance of the claim within that period, and is limited to not more than five years after payment of the tax, unless the claim has been disallowed and the action is commenced within two years from the disallowance.
>
> Neither of these claims was rejected within six months after filing. And in each case more than two years elapsed after rejection before the Commissioner sent notice that the claim had been disallowed. Neither action was commenced within five years after payment of the tax or within two years after disallowance of the claim. The taxpayers contend, and the Circuit Court of Appeals held, that the permission to sue continues for two years after notice that the claims had been disallowed, and that therefore these actions were commenced within time.
>
> As the Commissioner did not act within six months, permission to sue did not depend upon the rejection of the claim or upon the giving of the notice. By the terms of the statute the period within which the government consented to be sued commenced at the expiration of such six months, and continued uninterruptedly through the five-year period following the date of payment and until "two years after the disallowance." While the statute declares that the Commissioner within a specified time shall notify the taxpayer that his claim has been disallowed, it is nowhere stated that the Commissioner's failure to give the notice will in any event operate to extend the time for bringing suit. An implication to that effect cannot prevail against the rule expressly stated. It is clear that, where the Commissioner renders

no decision within six months, the section contemplates that before commencing his suit the taxpayer will ascertain by inquiry whether the Commissioner has acted. This at least suggests that it may be the intention of the act to leave a like burden upon claimants in all cases.

* * * *

Having regard to the rule of strict construction to be applied to waivers by the United States of its sovereign immunity from suit, the clause reasonably may be read merely as a direction to the Commissioner to send the notice to claimant without making the failure so to do have the effect of enlarging the period for suing as otherwise definitely prescribed.

There are two important distinctions between the statute involved in the Michel case and the one involved in the case at bar. (1) The former statute clearly distinguishes between a "disallowance" of a claim and the prescribed notification of the taxpayer by mail of such disallowance, while the latter statute makes no such distinction nor does it indicate what act shall constitute the denial by the director that is required, leaving it within the power of the director to determine the matter, as pointed out in my original report. (2) Under the statute involved in the Michel case, if the Commissioner of Internal Revenue had not acted within six months of the filing of a claim, "permission to sue did not depend upon the rejection of the claim or upon the giving of the notice," as stated by the Supreme Court, while the statute involved here expressly makes the premission to sue depend upon the rejection of the claim.

The statement of the facts in the Michel case indicates a further distinction between the two cases in that it appears to have been the practice for the Commissioner of Internal Revenue to publish schedules showing his action in disallowing claims, such schedules being open to inspection by the claimants, whereas no such practice in the Veterans' Bureau or Administration has ever been called to my attention.

I therefore affirm the conclusion stated in my original report on the jurisdictional questions and my recommendation therein that the jurisdictional defenses raised by the defendant's pleas to the amended declaration be overruled.

Respectfully submitted,

WILLIAM R. HARR,
Commissioner, Veterans' Cases.